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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,396	03/16/2001	Rainer Anderlik	49256	3913

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/762,396

Applicant(s)

ANDERLIK ET AL.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. Rejections not maintained have been withdrawn.

Claims 1 – 14, 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caupin et al 5504142 and Kubanek et al –GB2194791 in view of Guntherberg et al 5852113.

Caupin incorporates the instant odorant oils of pheromones into the instant thermoplastic elastomeric polyesters (col. 2, line 51-line 65, col 3, example 1) including amide & block copolymers, workable in cold temperatures (claim 12) and stable 120 days (col. 5 top). Crosslinked & Tg are not specified, but not shown absent; the products are functionally as of the instant, although a second polymer is not evident.

KUBANEK also impregnates similar plastics to provide stability (p 1, top, & col 2). Examples show further mixing with a second polymer, inclusive of the instant ABS (example 3). Again, the ingredients are of the instant, but Tg & crosslink is not specified. Example 1 is to polyethylene terephthalate, that of Caupin (col. 3, top) or polybutylmethacrylate (example 2) of the instant, as is example 4 & 5, utilizing SAN copolymers or butyl methacrylates.

One of ordinary skill in the art would find it within their purview to use either reference to provide odorant, stable plastics, with the advantage of the second polymer at Kubanek of preparing mouldings, extruding, & otherwise providing formed article (P 2, lines 3-50). Use of the specific odorant is shown by Caupin- to control insects, while Kubanek is more general; thus one of ordinary skill would find it obvious to incorporate the desired odor into the Kubanek article. The particular incorporable plastic was not seen as critical – however, GUNTHERBERG (col. 9, line 57-line 55, col 10) lay out the instant Tg first polymers, and teach incorporation into them of odorant materials (col. 13, lines 45-50) followed by further mixing with other polymers (col. 14, lines 25-33) permitting extrusion & molding to form plastic articles. Applicant has not shown these polymers to not have the instant attributes of Tg & crosslinking.


It would have been obvious to one of ordinary skill at the time of the instant invention to incorporate the polymers of Guntherberg to the process of Kubanek, in order to provide advantageous plastic mouldings or extruded articles, of odorant materials of choice. The particular odorant is a function of desired effects, & Caupin shows pheromones to be incorporable in polymers if insect control articles are desired.

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Claims 8,9,11,13,14,19 -22 are rejected under 35 U.S.C. 102(b ) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kubanek et al GB 2194791

The instant articles are taught , with stability of the instant invention, unclaimed. No patentable weight is given to the process of making the claimed products.

Applicant's arguments filed 6/13/05 have been fully considered but they are not persuasive. Arguments are directed to the odorant, unspecified, except @ claim 3, as the swelling agent; however the language is in the comprising guise , & it is not clear that prior art use of supercritical fluid precludes the effect. The Tg and polymer claims are also seen as not necessarily other than as instantly claimed, but we find the current references closer to specifying the instant process steps & polymers, as of claims 6,7,18, and page 5 of the specification. However, the incorporation of claim 3 with specification of the polymers, as of claims 6 and 7 into claim 1 is seen as both the instant invention as disclosed, & not suggested nor obvious over the prior art of record. Claim 17 permits of macroporous materials, & some of the references do show homogenous impregnation or dispersion of odorant materials in polymers.

  
NEIL S. LEVY  
PRIMARY EXAMINER